B. This Case Does Not Present an Important Question of Federal Law that Warrants Supreme Court Review.

Although AIU states in its Petition that this case presents important issues that require Supreme Court review, its major rationale is that there is a "need for uniform application of the IDEA" and of § 1415(j) in particular. To the extent that this is a restatement of Petitioner's circuit-conflict argument, we reiterate that there is no conflict, and therefore no lack of "uniformity." As for whether the case presents "important issues," AIU provides no explanation of why the issues raised here are of such signal importance as to warrant this Court's attention now, before additional circuits have had the opportunity to address them.

II. PETITIONER MISSTATES THE LEGAL ISSUES IN THIS CASE, AND ITS CHALLENGE TO THE CORRECTNESS OF THE CIRCUIT COURT'S OPINION SHOULD BE REJECTED

AIU's Petition essentially is a challenge to the correctness of the decision of the court of appeals, which generally is not, in and of itself, a basis for this Court to grant a Writ of Certiorari. At any rate, AIU's arguments are incorrect. Those arguments depend on a greatly exaggerated, unproved, and unsubstantiated presentation of the differences between the section of the IDEA that relates to children with disabilities under age 3 (Part C) and the section that relates to older children with disabilities (Part B).[4] In several crucial respects AIU misstates the law altogether.

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4. In the Questions Presented, AIU describes the Part C system as a "medical model" and the Part B program as an "education program." As is demonstrated below, these distinctions are not justified by the statutory language or the implementing regulations.

The petition states that children in the Part B preschool system receive "special education" while children under age 3 do not. Pet. at 8. However, like preschoolers and older children with disabilities, infants and toddlers with disabilities are eligible under Part C for "special instruction" provided by "special educators" and for related services such as occupation and physical therapy. 20 U.S.C. §§ 1432(4)(E)(ii), (iii), (iv), (v), and (F)(i) (definition of "early intervention services" and "qualified personnel").

AIU also asserts, without citation to authority or support in the record, that the Part C system is a "medical model"; and therefore different than Part B. In fact, Part B and Part C differ little, if at all, with respect to a child's entitlement to "medical services." Both require medical services to evaluate a child and diagnose a child's disability or developmental delay. *Compare* 20 U.S.C. § 1402(26)(A), *with* 20 U.S.C. § 1432(4)(E)(viii). Likewise, Part B and Part C both mandate that children with disabilities receive nursing services from local early intervention agencies in some situations. *Compare* 34 C.F.R. § 303.12(d)(6), *with* 34 C.F.R. § 300.24(b)(12).

AIU's effort to classify Part C services as "medical" and Part B services as "educational" is belied by its offer to continue all but one of Georgia's services, irrespective of whether these services would be deemed "medical" or "educational." Its "medical/educational" distinction argument is contrived for its truly intended objective of maintaining and exercising its effectuated unilateral authority. The same is true of AIU's strained and confounding argument that the transition required of the disabled child from one program to the next at the age of three somehow equates to an "initial admission to public school" or an application "for initial

services" under the IDEA's pendency provisions. 20 U.S.C. §§ 1415(j), 1439(b). In truth, AIU is not as much concerned with providing a disabled child with appropriate IDEA services as it is with sustaining its autonomy to determine, without restraint from any source – including other responsible IDEA agencies, but especially the parents – what services it will provide to disabled children. AIU's program for Georgia was predetermined, and AIU's approach thwarted her parents and denied them any meaningful input into the decision making process.

Finally, AIU incorrectly states that Part C centers "on the needs of the family rather then [sic] the individual student," in contrast with the Part B preschool program, which focuses on the child. Pet. at 4. The truth is that the child is the focus of both programs, and both programs recognize the important role that parents play in developing and overseeing the program and supporting the child. Thus, for example, the parent is a member of both the IFSP and the IEP teams, and the IFSP and IEP must explain how parents are to be informed of progress (*see, e.g.*, 20 U.S.C. §§ 1414(d)(1)(A)(i)(III), 1414(d)(1)(B)(i), 1436(e)). Parent training is both a Part C early intervention service and a related service for Part B children. 20 U.S.C. § 1432(4)(E)(i) (Part C family training, counseling, and home visits), 34 C.F.R. § 300.24(b)(7) (Part B parent counseling and training).

But more to the point, the court of appeals explained why this discussion of the differences between Parts B and Part C misses the mark:

> Of course, the issue here is not whether Part C and Part B are the same; they clearly are not.

> Rather the issue is whether § 1415(j) required the AIU to include conductive education as part of Georgia's initial IEP until the agency and the parents could resolve their dispute over her IEP. That is a very different question.

Id. at 13.

The Third Circuit concluded that § 1415(j) required that the AIU continue the services in Georgia's IFSP pending the outcome of the mandated independent review processes concerning the dispute over the services proposed in AIU's IEP for Georgia. In reaching its decision, the court of appeals relied on the IDEA, on several circuit court decisions, and on this Court in *Honig v. Doe*, 484 U.S. 305 (1988). *Honig* specifically addressed § 1415(j), the "stay-put" provision, which it characterized as "unequivocal" in enjoining unilateral action by school officials (in that case the unilateral suspension of students with disabilities). 484 U.S. at 323. The decision in this case was consistent with the IDEA's provisions and purpose, and further review by this Court is not required.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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